

**United States Department of Labor
Employees' Compensation Appeals Board**

J.W., Appellant

and

**U.S. POSTAL SERVICE, COMMUNITY
BRANCH, Alexandria, VA, Employer**

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**Docket No. 17-0870
Issued: July 12, 2017**

Appearances:

Alan J. Shapiro, Esq., for the appellant¹

Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

PATRICIA H. FITZGERALD, Deputy Chief Judge

COLLEEN DUFFY KIKO, Judge

VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On March 13, 2017 appellant, through counsel, filed a timely appeal from a January 18, 2017 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant met her burden of proof to establish an injury causally related to an April 24, 2015 employment incident.

¹ In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; see also 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

² 5 U.S.C. § 8101 *et seq.*

On appeal counsel asserts that the January 18, 2017 decision is contrary to fact and law.

FACTUAL HISTORY

On August 13, 2015 appellant, then a 54-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that she injured her right shoulder and back on April 24, 2015 when opening and closing doors and lifting parcels. In correspondence dated August 18, 2015, the employing establishment controverted the claim based on fact of injury. An employing establishment health and resource management specialist noted the time lapse between the claimed injury and filing the claim. The employing establishment received medical evidence on August 12, 2015 diagnosing appellant with a rotator cuff tear. An accident review interview form, signed by appellant and the employing establishment supervisor of customer services on August 13, 2015, indicated that an accident occurred on April 24, 2015 during normal mounted delivery of boxes, caused by lifting and reaching and sliding a delivery vehicle door back and forth.

Dr. William L. Burner, a Board-certified orthopedic surgeon, submitted an August 12, 2015 duty status report (Form CA-17) in which he noted a diagnosis of rotator cuff tear. He advised that appellant could not work.

By letter dated August 19, 2015, OWCP informed appellant of the evidence needed to support her claim. This was to include her response to an attached questionnaire and a medical report from her attending physician explaining how the reported work incident caused or aggravated the claimed right shoulder condition. She was afforded 30 days to submit the requested information.

Medical evidence submitted thereafter consisted of a verification of treatment form, signed by Dr. Cindy C. Hsiao, a Board-certified internist, on April 24, 2015. She noted that appellant had been seen that day and should avoid heavy lifting. Dr. Hsiao signed additional verifications of treatment on April 27 and May 1, 2015. On the former she noted that appellant had received medical treatment that day, and on the latter advised that appellant had been ill and unable to work May 1 to 2, 2015. An April 27, 2015 summary of visit noted that she was seen by Dr. Hsiao who listed a diagnosis of right shoulder joint pain, and described appellant's vital signs. It indicated that a right shoulder x-ray had been taken.

An unsigned verification of treatment form dated April 30, 2015 indicated that appellant had been seen by Dr. Kelly A. Martens, a Board-certified orthopedic surgeon, for right shoulder pain due to calcific tendinitis. The report indicated that appellant had a five-pound lifting, pushing, and pulling restriction.

A summary of visit form dated June 8, 2015 indicated that appellant had been seen primarily for smoking cessation counseling by Dr. Lynelle T. Johnson, Board-certified in family medicine. An August 1, 2015 verification of treatment form, signed by Dr. Taemin Hwang, who practices urgent care medicine, indicated that appellant was excused from work on August 3, 4, and 5, 2015. Dr. William L. Burner, a Board-certified orthopedic surgeon, signed a verification of treatment form on August 4, 2015. He advised that appellant could not return to work until August 17, 2015.

A summary of visit dated August 12, 2015 noted a diagnosis of right rotator cuff tear and described appellant's vital signs. It indicated that she was seen by Dr. Corey A. Gilbert, Board-certified in orthopedic surgery, that day. A summary of visit dated August 12, 2015 indicated appellant had been seen by Dr. Burner that day for a diagnosis of right rotator cuff tear.

By decision dated September 21, 2015, OWCP denied the claim because appellant had failed to submit evidence sufficient to establish that the claimed incident occurred as alleged. It noted that she had not responded to its development letter by providing a statement regarding the circumstances of the claimed injury.

On January 4, 2016 appellant requested reconsideration. In a statement dated September 29, 2015, she indicated that she noticed shoulder pain while casing her route and lifting parcels. Appellant went to her doctor, who prescribed medication, and when pain continued, returned to her doctor and had an x-ray. She indicated that she then went to see an orthopedic surgeon who ordered a right shoulder magnetic resonance imaging (MRI) scan, and a torn rotator cuff was diagnosed.

In a letter dated December 28, 2015, appellant advised that the claimed injury occurred on July 30, 2015. She indicated that when she returned from her route that day, there was no supervisor available for her to report the injury. Appellant maintained that, while delivering her mounted route that day, while inserting mail in a box, she experienced a lot of pain in her upper right shoulder that worsened when closing and opening the door of the mail truck.

In an undated report, Dr. Burner indicated that appellant had examination and treatment on April 24, 27, and 30, and August 4 and 12, 2015. He related a history that about two weeks before April 30, 2015 appellant noticed pain in her shoulder after driving and lifting packages at work. Dr. Burner reported that an August 7, 2015 MRI scan demonstrated a tear of the supraspinatus tendon with some atrophy of muscle of the right shoulder. Calcific tendinitis was initially diagnosed and, following the MRI scan, a right rotator cuff tear was diagnosed. Dr. Burner commented that repetitive forceful activity aggravated the rotator cuff tear. On a September 11, 2015 duty status report, he indicated that appellant could not work due to a right rotator cuff tear. Appellant signed a statement of certification on September 19, 2015, indicating that she had no previous similar injury or disability.

In a merit decision dated March 17, 2016, OWCP modified the September 21, 2015 decision to find that the incident occurred as claimed. It, however, denied the claim because the medical evidence submitted failed to contain a medical opinion regarding how the accepted work incident caused or affected the diagnosed condition.

On May 3, 2016 appellant, through counsel, requested reconsideration. Counsel submitted additional evidence including appellant's medical disability forms, a Family and Medical Leave Act notice, and an employing establishment telephone report indicating that appellant had called in regarding an April 28, 2015 industrial accident. A summary of visit dated April 30, 2015 indicated that appellant had been seen by Dr. Martens and included a verification of treatment form, signed by Dr. Martens that day.

On a duty status report dated May 6, 2015, Dr. Hwang indicated that appellant could work with lifting restrictions. On August 15, 2015 Dr. Burner advised that appellant was

currently disabled due to shoulder pain with lifting. On a duty status report dated September 19, 2015, he advised that appellant was totally disabled due to a right rotator cuff tear. A summary of visit dated October 29, 2015 indicated that appellant had been seen by Dr. Burner that day for a diagnosis of calcific tendinitis of the right shoulder. He provided a duty status report that day advising that appellant could work modified duty. On a physician's reports of disability dated November 4 and 25, 2015, Dr. Burner advised that appellant could work with her left hand. He also noted that she had been disabled from work since August 1, 2015. A summary of visit dated December 14, 2015 indicated that appellant had been seen by Dr. Gilbert that day. Correspondence dated December 22, 2015 indicated that appellant was scheduled for surgery on January 29, 2016. Dr. Burner provided a duty status report on December 24, 2015 in which he indicated that appellant could not work from October 28, 2015 to January 28, 2016, pending shoulder surgery on January 29, 2016. He advised that she was totally disabled on January 20, 2016. A summary of visit dated January 29, 2016 included discharge instructions. A summary of visit dated February 16, 2016 indicated that appellant had been seen by Dr. Gilbert that day with a history of rotator cuff repair. Appellant was referred to physical therapy.

In a merit decision dated January 18, 2017, OWCP denied modification of its prior decisions. It found that appellant had failed to provide a well-reasoned medical opinion explaining how the diagnosed condition was causally related to the traumatic work event.

LEGAL PRECEDENT

An employee seeking compensation under FECA³ has the burden of proof to establish the essential elements of his or her claim by the weight of reliable, probative, and substantial evidence,⁴ including that he or she is an "employee" within the meaning of FECA and that he or she filed a claim within the applicable time limitation.⁵ The employee must also establish that she sustained an injury in the performance of duty as alleged and that disability for work, if any, was causally related to the employment injury.⁶

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether fact of injury has been established. There are two components involved in establishing fact of injury. First, the employee must submit sufficient evidence to establish that she actually experienced the employment incident at the time, place, and in the manner alleged. Second, the employee must submit medical evidence to establish that the employment incident caused a personal injury.⁷

³ *Supra* note 2.

⁴ *J.P.*, 59 ECAB 178 (2007).

⁵ *R.C.*, 59 ECAB 427 (2008).

⁶ *Id.*; *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁷ *T.H.*, 59 ECAB 388 (2008).

Causal relationship is a medical issue, and the medical evidence required to establish causal relationship is rationalized medical evidence.⁸ The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the employee.⁹ Neither the mere fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.¹⁰

ANALYSIS

OWCP accepted that on April 24, 2015 appellant lifted parcels and opened and closed her vehicle door. The Board finds however that the medical evidence submitted by appellant is insufficient to establish that this incident resulted in an employment injury.

Appellant claimed a right shoulder injury. She submitted a number of reports that were merely verifications that she had been seen for medical treatment. Appellant also submitted a number of visit summaries. These were unsigned and merely identified the physician seen, described her vital signs, and listed diagnoses unsigned medical reports are of no probative value.¹¹ Appellant also submitted physician reports of disability forms. Some of these advised that appellant was disabled for specific periods, yet none contained any discussion of a cause of any diagnosed condition or disability. Medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.¹²

Dr. Burner reported that appellant noted pain in her shoulder after driving and lifting and that an MRI scan demonstrated a supraspinatus tear. He also indicated that repetitive forceful activity aggravated the rotator cuff tear. Dr. Burner, however, did not link this activity to any of appellant's employment duties or provide any explanation as to how the employment incident caused her right shoulder condition.¹³

Medical evidence submitted to support a claim for compensation should reflect a correct history, and the physician should offer a medically sound explanation of how the claimed work event caused or aggravated the claimed condition.¹⁴ No physician did so in this case.

⁸ *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

⁹ *Leslie C. Moore*, 52 ECAB 132 (2000); *Gary L. Fowler*, 45 ECAB 365 (1994).

¹⁰ *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

¹¹ *See J.W.*, Docket No. 11-1475 (issued December 7, 2011); *see also Merton J. Sills*, 39 ECAB 572, 575 (1988).

¹² *R.B.*, Docket No. 16-0317 (issued May 3, 2016); *Willie M. Miller*, 53 ECAB 697 (2002).

¹³ The Board notes that neither a report of the right shoulder MRI scan nor the operative report from January 2016 is found in the case record.

¹⁴ *D.D.*, Docket No. 13-1517 (issued April 14, 2014).

While the medical opinion of a physician supporting causal relationship does not have to reduce the cause or etiology of a disease or condition to an absolute certainty, neither can such opinion be speculative or equivocal. The opinion of a physician supporting causal relationship must be one of reasonable medical certainty that the condition for which compensation is claimed is causally related to federal employment and such relationship must be supported with affirmative evidence, explained by medical rationale and be based upon a complete and accurate medical and factual background of the claimant.¹⁵ The Board finds that there is no medical opinion of record that includes a sufficient explanation as to how the accepted work incident caused appellant's right shoulder condition.

It is appellant's burden of proof to establish a diagnosed condition is causally related to the employment incident. As none of the medical evidence of record provides the necessary rationale explaining how and why the physician believes that the accepted incident resulted in a diagnosed right shoulder condition, she has failed to meet her burden of proof.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish an injury causally related to an April 24, 2015 employment incident.

¹⁵ *Patricia J. Glenn*, 53 ECAB 159 (2001).

ORDER

IT IS HEREBY ORDERED THAT the January 18, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 12, 2017
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board